

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 146 of 1997

in

COMPANY PETITION No 282 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

MEHTA INTEGRATED FINANCE LTD

Versus

RONAK PRINTS PRIVATE LTD.

Appearance:

MR JA ADESHRA for Petitioner
MR ASHOK K PADIA for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 28/01/98

ORAL JUDGEMENT

Mehta Integrated Finance Ltd., a company

incorporated under the Companies Act, 1956, has filed the present petition under Section 433 of the Companies Act, 1956 seeking an order of winding up of Ronak Prints Pvt. Ltd., a company incorporated under the Companies Act, 1956.

2. The company in question, namely, Ronak Prints Pvt. Ltd., had entered into an agreement with the petitioner on 22nd January, 1993. As per the said agreement, the company in question took possession of a motor vehicle - Maruti Van bearing Engine No.783073, Chassis No.918609. The agreement between the parties was in the nature of a lease and the company in question had agreed to pay the price of the vehicle of Rs.1,32,000 in eight installments. The first instalment was payable on 22.1.1993 and the last instalment was payable on 22.10.1994. It is an admitted fact that five installments payable upto 22.4.1994 were paid by the company in question. It seems that, after the payment of 5th instalment, the vehicle in question had met with an accident and the said vehicle was given for repairs to Cargo Motors (Guj.) Ltd. and it seems that the said vehicle is lying there even today.

3. The present petitioner issued a statutory notice to the company and in the said statutory notice dated 26.12.1996 arrear of three installments amounting to Rs.63,658 and future interest was claimed. The company in question did not pay the amount as per the said statutory notice and therefore the present petition is filed.

4. The company in question was served with a notice of this petition and the company in question appeared before this court and filed an affidavit-in-reply disputing the claim of the petitioner. In the said affidavit-in-reply, it has been mentioned that the claim of the petitioner that they have not paid three installments in question and that they had paid five installments as per the agreement between the parties is not disputed or denied. But it is contended in the affidavit-in-reply that, in 1994 one Bank had locked and sealed the factory premises of the respondent and therefore the respondent had financial difficulties as his factory was not working and at that time the present petitioner before this court had approached the respondent company and there were negotiations and settlement between the parties. As per the said settlement, the respondent had agreed to give up payment of the five installments paid by them and the petitioner before this court had agreed that they would take the

vehicle from Cargo Motors Ltd. on making payment of repairing charges. Accordingly, the settlement between the parties regarding liability of the respondent to pay the three installments in question was finally settled. According to the respondent, in view of the settlement between the parties on the date of the statutory notice, the respondent was not owing any amount to the petitioner and thus there is no admitted debt between the parties.

5. Therefore, the only question to be considered by me is as to whether there is a bona fide and reasonable dispute about the debt in question and my finding on the said point is in the affirmative for the reasons stated hereinabove. The respondent has produced along with the affidavit-in-reply a copy of the letter addressed by the respondent on 13.9.1996 to the Police Inspector of Navrangpura Police Station. Along with the said copy of letter, two postal acknowledgment receipts showing that the copy of the said letter was endorsed to the said Police Inspector as well as to the present petitioner are produced. In this letter addressed to the Police Inspector of Navrangpura Police Station, it has been clearly mentioned the stand which the company in question has taken in this petition. It has been specifically mentioned in this letter-cum-statement addressed to the Police Inspector on 13.9.1996 that there were negotiations and settlement between the Director of the company - Mehta Integrated Finance Ltd. and the Managing Director of the company in question and, as per the said negotiations and the talk, the company in question was to give up the payment of five installments made up by them and the petitioner before this court had agreed to take the vehicle directly from the garage after making payment of the repairing charges. It is very pertinent to note that neither in the statutory notice nor in the petition there is any reference of the petitioner, in this petition, approaching the police. It is also very pertinent to note that, though the last instalment was payable on 22.10.1994, no notice demanding the payment was issued to the respondent before issuing the statutory notice. In spite of this specific contention by the respondent that negotiations and settlement had taken place between the Director of the petitioner company and the Managing Director of the respondent, no affidavit of the Director of the petitioner company has been filed denying the same. Therefore, this conduct of the petitioner in not making any reference of their approaching the police in September 1996, not making any demand of the amount till December 1996 and not filing affidavit of the Director of the petitioner company

denying the stand taken by the petitioner right from September 1996 makes it very difficult to accept the mere denial by the petitioner of the stand taken by the respondent. No doubt, the petitioner has produced today one notice issued on 6.1.1998. The notice is issued on 6.1.1998 by Cargo Motors Ltd. The said notice is addressed to the present petitioner as well as to one Ashokbhai Kedia. In the said notice it has been claimed by Cargo Motors Ltd. that the vehicle in question was given for repairs to them by Ashokbhai Kedia. There is no dispute that said Ashokbhai Kedia is the Managing Director of the company in question. In my opinion, this letter seems to have been procured by the present petitioner to defeat the claim of the respondent. If at all Mehta Integrated Finance Ltd. is not concerned with the vehicle and if the vehicle was given for repairs by Ashokbhai Kedia, there was no necessity to address this letter to Mehta Integrated Finance Ltd. Here also, this notice is coming two years after filing of the petition. Admittedly, the vehicle in question was given for repairs prior to 1996. It is not at all probable that the garage will keep mum for two years and all of a sudden issued such a letter. Therefore, in the circumstances, merely because of said letter of Cargo Motors Ltd., I am unable to hold that the claim made by the respondent is dishonest, unreasonable and improbable. In my opinion, the stand taken by the respondent is consistent, and particularly so when the petitioner has not come before the court with clean hand by not making any reference to their approaching to the police and not filing affidavit of the Director of the company in spite of the specific stand taken by the company in question that negotiations and settlement had taken place between the Director of the petitioner company and the Managing Director of the company in question. Therefore, in the circumstances, I hold that the debt is disputed and as such this winding up petition will have to be rejected. I, accordingly, reject the same with no order as to costs.

6. The observations made by me in the judgment are only for the purpose of deciding this petition. They are not final and conclusive. I have made the observations only for the purpose of considering the question as to whether the defence raised by the defendant for disputing the debt is prima facie an honest and reasonable one or not.

[KMG Thilake]

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